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ABSTRACT

Basic skills teachers have a legal and moral responsibility to instruct students in reading, writing, and mathematics. The obligations of teachers and principals are extensions of the legal responsibility assumed by the state and local boards of education and practitioners' professional and moral responsibilities. Teachers and principals are primarily responsible for (1) setting instructional and learning objectives and standards, (2) providing competent instruction, (3) accurately measuring and evaluating teaching and learning performance, and (4) establishing excellence as the criterion for staff and student activities. If they fail to fulfill these obligations, educators could face legal action from parents or students claiming educational malpractice, negligence, or fraudulent misrepresentation. Teachers must learn their legal responsibilities in order to protect themselves as well as do the job for which they were hired. Besides improving their understanding by reading widely in the many law sources available or taking a course in school law, teachers must also make sure the school develops and follows a sound basic skills curriculum. (HTH)

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Legal Responsibility for Curriculum in the Basic Skills: Whose Job Is It?

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Teachers of basic skills have a legal and moral responsibility to their students for providing instruction in reading, writing, and speaking the American English language and for teaching students to compute in the language of mathematics. They have a unique responsibility for teaching all students in spite of handicaps or lack of motivation to learn. Their special charge is to produce literate students who can understand the syntax and semantics of the language, who can write legibly and spell correctly, who can read critically and fluently, who can speak effectively and listen discriminately. In spite of innovative electronic media, and especially that of computer technology, the basic skills teacher must produce students who can understand computation and the language of mathematics. Or perhaps, it is because of, not in spite of, the moving into the Electronic Surround that this has made the responsibility of basic skills teachers more important.

Obligations of Administrators and Teachers for Basic Skills Curriculum

Once a state has spoken regarding the specific content to be addressed in schools, the local board of education uses their delegated board prerogatives to establish the specific district curriculum. This includes the preparation of curriculum guides, the selection of textbooks (if not controlled by the state), and the hiring of teachers to deliver instruction.

State prescriptions for school curricula include a variety of provisions. Specific attention to the history of the state is commonly required. The

state provides direction in the areas of curricular design and establishment of qualifications for the professionals (teachers and other educational personnel) that will be delivering the prescribed curriculum. The local board then establishes a curriculum to insure compliance with state mandates and to fulfill the specific educational interests of the community. School boards usually organize the delivery system around age levels with children placed in buildings under a principal and a staff that are to carry out these and local mandates.

The principal and staff are employed, as previously indicated, on the basis of their professional education and state certification. The principal and teachers have broad professional prerogatives to organize the school and instruction to carry out the curriculum. The "right of the teachers to teach" was strongly established by the Supreme Court in 1923 (Meyer v. Nebraska) and reinforced by courts as a common law principle numerous times. The "right to teach" concept gives both the principal and teacher broad professional authority commensurate with heavy responsibility to insure that children receive an education.

What are these professional responsibilities? They rest to some extent on certification standards. These standards are to certify that the individual is professionally prepared to teach. All certification standards, regardless of the teacher's specialty, require that the teacher is competent to deal with specific matter areas and age groups of students. The certificate also validates that the person possesses the skills and knowledge related to the delivering of instruction. A

number of states have mandated that teachers demonstrate competency in all basic skills, the assumption being that such skills are relevant to all learning at all levels of schooling.

Beyond certification requirements, there are a number of responsibilities based on an assumption that a teacher has professional standing. Professional responsibilities include selecting specific content to carry out a mandated curriculum objective, establishing standards of performance, organizing instruction and selecting appropriate instructional techniques, and measuring and evaluating the accomplishments of students in achieving prescribed learning outcomes. The teachers and the principal have broad professional responsiblities. These should not be taken lightly or be assumed by the board, parents, or other interested groups. These responsibilities apply to all children, not just the highly motivated or the easy to handle. The concept that binds the state to providing "equal protection" and due process also binds the teachers and principal in a similar manner.

Principals and teachers are to set academic standards predicated on the assumption that all children are to be provided the minimum skills necessary to perform as productive members of society. Recent litigation to insure all children participate in opportunities provided by schooling is based on the premise that the outcomes of schooling make a difference. It is society's expectation that, with the completion of any subject, grade level, or high school graduation requirements, students have acquired a set of skills and/or competencies related to the classroom experience. In organizing instruction for teaching these skills, the teacher becomes legally accountable to develop methodogies necessary to accomplish

the stated goals within the broad framework of the prescribed curriculum.

The teacher must also assume responsibility for adequately measuring and evaluating teaching and learning outcomes. Later, the legal concerns related to educational accountability, educational malpractice, and misrepresentation will be addressed. At this juncture, the responsibilities are highlighted as moral and professional expectations. More directly, students and parents have not only the right to know the expected standards but to know the expected level of accomplishment. This includes setting a minimum level for knowledge, understanding and skill competency. For example, the teacher establishes a standard for composition. If the student fails to meet the standard, and the teacher reports to all concerned that the performance is average, the teacher in this instance has failed the test for professional and moral responsibility. Thus, a key professional role is the maintenance of standards through accurate and honest measurement and evaluation.

Beyond these professional teaching responsibilities, teachers share with the principal and all professional staff the responsibility for establishing a positive climate for teaching and learning. Emphasis only on minimum standards fails the test for professional behavior, and it may also lower expectations of students and teachers. Principals play a key role in orchestrating the schooling process. Principals must help professionals focus their individual values on an appropriate set of expectations for the unit. Professional behavior suggests that excellence is the aspiration level. These include teaching for excellence and demanding excellence from the learner.

As previously outlined, the overall societal mandate to schools, which must be implemented by teachers, is to provide schooling to all students. Excellence in this context is not a concept applicable only to the extremely able and willing. It applies to all students, regardless of social background, variances

in inate abilities, and their future position nd role in society. The legal, professional, and moral responsibilities could be compared to the sides of a triangle or the legs on a stool. All three must be present to accomplish the tasks of teaching and learning.

The obligations of teachers and principals are both extensions of legal responsibilities assumed by the state and local boards of education and the professional and moral responsibilities associated with the profession. Teachers and principals are primarily responsible for (1) setting instructional and learning objectives and standards, (2) providing competent instruction, (3) accurately measuring and evaluating teaching and learning performance, and (4) accepting excellence as the criteria for all their activities and those of students.

If the principal or teacher fails to deliver, parents and students may rightfully feel that there has been a breach in the professional responsibility. This may lead to legal action, something any professional would want to avoid.

Educational Malpractice

It is not the desire of any school or teacher to find themselves in court as a defendant in a malpractice or negligence suit. Nonetheless, the classroom presents many opportunities for malpractice, negligence, and fraudulent misrepresentation. The legal jargon may be both new and frightening to many teachers. And, while educational malpractice is also a new and novel twist in the traditional concept of tort, the possibility of its ultimate acceptance as a common law concept is not unrealistic.

The increase in litigation related to educational malpractice is directly associated with the development of minimum competency testing, competency-based graduation requirements, and special legislation that guarantees the educational rights of children classified as handicapped. These developments have occurred

in a period where the public has become more conscious that many high school graduates do not have a basic knowledge of reading, writing and computation.

Acquisition of the basic skills is directly related to the ability to gain and hold meaningful employment and entrance into the mainstream of American society. Young people and their parents may rightfully feel cheated if the lack of basic skills prevents their finding meaningful employment. They may possess high school diplomas and yet be functionally illiterate. The temptation to sue, particularly to our litigious society, is strong. Success in such suits is increased as society demands more accountability for public education.

The issue of educational malpractice presently lacks legal clout. Courts have traditionally felt that education is rightfully more a political rather than a legal matter. Even the application of constitutional rights for both young people and their teachers is a contemporary development. The movement towards identifying tort responsibility when the injury is educational in nature is a slow and torturous process for parents and their attorneys. The traditional bases for pleading negligence in tort cases are the concepts of duty, standard of care, injury and cause. These are difficult to define when a student does not learn. The duty to teach, as suggested in Donahue v. Copiague Union Free School District (1978) case, is coupled with a duty to learn. Teachers have real limitations in accepting the responsibility for whether a child learns. The duty to teach is quite clear. What is not clear is what good teaching entails. Thus, the standard of care expected in the classroom is not clear. Neither is it similar across the same grade level or content area. Teachers as professionals set learning expectations. The range of expectations among language arts or English teachers in any school varies significantly. So significant, that two children, taking a similar class but with different teachers, may both receive a mark of excellence for totally different levels of

performance. One may demonstrate superior competency, for example, in use of grammar and the other possess few, if any, such competencies. State and school districts that establish standards for minimum competency are responding to this disparity in standard of care across classrooms and teachers.

The third element of negligence is the establishment of injury. This also is a major difficulty in educational malpractice suits. Educators would not deny that educational injury is possible by misdiagnosis of the learner's deficits and their causation, educational misassignment, or erroneous evaluation of competency, or the failure to teach because of the teacher's incompetence or lack of appropriate professional training. No doubt, cases of educational injury do exist. Yet, the difficulty is defining the injury. The concept of "injury" in the educational setting requires courts to "plow new ground."

The fourth element in pleading negligence is cause, particularly difficult to define in educational malpractice. If a student fails to learn to read, can a teacher be identified as the proximate cause of this failure? In most instances, a student has had a number of teachers, each with some responsibility for teaching reading. The student and his/her parents, and the community that supports the school, may share the responsibility. A teacher's responsibilities, or those of the school, to insure that students are not physically harmed is an accepted common law principle. The proximate cause of physical injury is usually clearly identifiable. The responsibility of teachers to protect the physical well-being of students is well established. Yet, in educational malpractice suits, the proximate cause is more perplexing. There is no widely accepted professional standard that identifies the appropriate relationship of the teacher's activities with learning expectations. In fact, the numerous and often-times conflicting teaching practices support that no "state of the art" exists in teaching. And, if one exists, professionals are

not always comfortable in connecting teaching with either the child's success or failure in learning.

While negligence may exist in teaching when a child doesn't learn, it is difficult for courts to handle the pleading under traditional tort definitions. It would be less difficult if teachers were considered true professionals and thus responsible for their actions. Teachers are more likely classed as quasi-professionals having some, yet not all, of the characteristics of professionals. They possess training and status but are not necessarily held accountable for their actions as teachers. In fact, for educational malpractice to become legally recognized, society must define a more explicit professional role for teachers and expectations for students. The move towards competency-based education, minimum standards for students and, more importantly, competency-based teacher education, would move the art of teaching to a level of professional standing where negligent behavior would become more easily identifiable.

Beyond negligent teaching behavior is the issue of fraudulent misrepresentation. In legal terms, fraudulent misrepresentation is making a statement known to be false. Schools and teaching present numerous opportunities to "share the truth", often for the best of reasons. For example, a child has not completed the standard established for fifth grade in reading. Yet, the child tries hard and the teacher may even believe the child is "working up to capacity", and the child is given a passsing grade in reading, when having failed to reach the minimum level prescribed in the curriculum for "passing". The teacher's report to the student and parent in this instance is certainly a misrepresentation. One might say fraudulent, since the parent and child must rely on the information in making future educational decisions. A more obviously fraudulent action would be a teacher knowingly passing a child to

escape a confrontation with a persistent and challenging parent.

Again, as with other forms of educational malpractice, the test is whether one can plead that the teacher had a professional responsibility and that there was a breach of that responsibility. While good teaching is difficult to define, it is well established that teachers are responsible for grading. This right has consistently been protected by the courts as a professional responsibility. Grading decisions are critical to student and parents. Misleading parents about performance appears a clearer case of educational malpractice. Is it not important that teachers give parents the best and most accurate picture of the child's academic performance? And, would not greater accuracy in reporting performance place the teacher in a more professional position, one which would assist parents in demanding more from the schools so that their children could reach accepted levels of academic performance?

In practice, there are two types of cases based on educational malpractice. In one case, students may, in fact, complete a level of schooling and lack the capability to perform the associated basic skills. A graduate from high school, for example, is not able to read or write at the level suggested by the diploma. The issue is the incompetence of the student and the assumption that a teacher(s) or the school is responsible.

A second group of cases deal with instances where students have not received appropriate care as prescribed by law or regulation. Handicapped children who can be misdiagnosed, placed in inappropriate learning environments or simply not identified and attended to as prescribed by law and practice, are often plaintiffs in such cases. The introduction of special state and federal legislation to insure the educational rights of handicapped children are addressed may encourage malpractice litigations. Well-defined rules and regulations certainly make it easier to identify duty of care, injury and

and responsibility. Since the implementation of PL 94-142 in 1976, a number of suits have been filed alleging misdiagnosis, mistreatment, inappropriate placement, and lack of special services as mandated for handicapped children. These lawsuits address a public policy requirement explicitly spelled out in law rather than broad, less well-defined responsibilities to insure basic skills competency. Bilingual and disadvantaged children may fall in this category of duty of care and provision of special services.

Certainly administrators and teachers alike want to avoid litigation. Following the four principles listed earlier, those of accepting responsibility for setting instructional objectives and standards, providing competent instruction, accurately measuring teaching and learning performance, and expecting excellence from all students will eliminate most possiblities for legal action against school districts and employees.

Conclusion

Teachers must learn their legal responsibilities in order to protect themselves, as well as to do the job for which they were hired. This means they should understand the law themselves. They should read widely in the many sources available and/or take a course in school law. They should make sure their school district has sound basic skills curriculum developed and then follow it carefully. They should teach for excellence and mastery by all students. Basic skills teachers, as well as all other teachers, should be sure they teach what they say they teach! And, they should carefully assess and report the progress of their students. Parents need to hear the truth, even though it may not always be the most pleasant news. Teachers

who are doing the job they were hired to do and are following the curriculum need not fear telling parents and administrators the truth. However, teachers should never accept the premise that there are some students who cannot learn, that they are "working up to capacity." Students need help, instruction, responsibility training, and challenge to do excellent work. That means all students, even the handicapped or linguistically different.

The courts, representing the public or consumer, have implied that individuals have a fundamental right to basic minimal skills necessary for the enjoyment of the right of free speech and full participation in the political process. The courts are reflecting the moral and ethical responsibities of teachers, especially those of basic skills, which have been inherent in the job description of public school teachers since the founding of public education in America.